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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-------------------------|---------------------|------------------|
| 10/820,909  | 04/08/2004  | Eric E. Thorvaldson SR. | ET194-1             | 8843             |
| 21238   | 7590        | 07/29/2005              | EXAMINER            |                  |
| JOY L BRYANT, P.C.<br>P O BOX 620<br>LIGHTFOOT, VA 23090-0620 |             |                         | GUTMAN, HILARY L    |                  |
|   |             |                         | ART UNIT            | PAPER NUMBER     |
|   |             |                         | 3612                |                  |
| DATE MAILED: 07/29/2005                                       |             |                         |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/820,909

Applicant(s)

THORVALDSON, ERIC E.

Examiner

Hilary Gutman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9,10,21,28-30 and 32-39 is/are rejected.
- 7) ☒ Claim(s) 2-8,11-27,31 and 40-43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/8/04</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. Claims 2, 4-5, 11, 13-14, 21-22, 24-25, 27-28, 31-32, and 39 are objected to because of the following informalities:

In claim 2, line 5, "a vehicle frame" should be "the vehicle frame".

In claim 4, line 2, the period after "link" should be deleted.

In claim 5, line 1, "the" should be inserted after "wherein".

In claim 11, lines 6-7, "a lower pivot pin" should be "one said lower pivot pin". Also on lines 8-9, "an upper pivot pin" should be "one said upper pivot pin".

In claim 13, line 2, "said" should be inserted after "one".

In claim 14, line 2, "said" should be inserted after "one".

In claim 21, line 8, "the angled position" should be "an angled position".

In claim 22, the "mounting means" on lines 2, 5, 9, and 11 should be distinguished from one another and perhaps on line 2, "first" should be inserted before "mounting"; on line 5, "second" should be inserted before "mounting"; on line 9, "rear link" should be inserted before "mounting"; and on line 11, "center linking" should be inserted before "mounting".

Also in claim 22, line 5, "a vehicle" should be "the vehicle".

In claim 24, line 2, "member" should be inserted after "link".

In claim 25, line 1, "the" should be inserted before "at least one hoist".

In claim 27, line 1, "members" should be "member". On line 2, "first" should perhaps be inserted before "mounting".

In claim 28, line 3, a period should be inserted after "frame".

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In claim 31, lines 6 and 9, "mounting means" are recited and should be distinguished such that "a lower scissor arm mounting means" is clearly recited as well as an "upper scissor arm mounting means".

In claim 32, line 1, "the" both occurrences should be deleted.

In claim 39, line 1, "a vehicle from" should perhaps be deleted altogether since it is clear that a fixed bed vehicle is being converted. On line 3, "a vehicle" should be "the fixed bed vehicle". On line 12, "a vehicle frame" should be "the vehicle frame".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 28 and 32-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28 recites the limitation "a pivotal mounting means" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 32 recites the limitation "a mounting means" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 9, 21, 29, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Parker et al.

Parker et al. (3,740,097) disclose a vehicle dump body elevation device comprising: at least one hinge assembly for attaching a dump body to a vehicle frame, the hinge assembly having a lowered position wherein the dump body is substantially horizontal and a raised position wherein a front portion of the dump body is elevated higher than a rear portion of the dump body, and wherein the rear portion of the dump body is elevated clear of a rear bumper mounted on the vehicle frame; wherein the hinge assembly moves both the front and the rear portions of the dump body upwardly while pivoting the dump body to the raised position; and at least one hoist having a lower end pivotally attached to the vehicle frame and an upper end pivotally attached to the dump body.

With regard to claim 9, the hoist comprises a scissor hoist mechanism.

For claim 21, Parker et al. disclose a kit for modifying a vehicle to function as a dump truck, the kit comprising: at least one hinge assembly to move a dump body between a lowered position, wherein the dump body is substantially horizontal, and a raised position, wherein a front portion of the dump body is elevated higher than a rear portion of the dump body, and wherein the rear portion of the dump body is elevated clear of a rear bumper mounted on a

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vehicle frame; wherein the hinge assembly moves both the front and the rear portions of the dump body upwardly, while pivoting the dump body to the angled position; and at least one hoist having a first means for pivotal attachment to the vehicle frame and a second means for pivotal attachment to the dump body.

With regard to claim 29, the hoist is a scissor hoist mechanism.

For claim 39, Parker et al. (3,740,097) inherently disclose a method of converting a vehicle from a fixed bed vehicle to a dump truck, the method comprising: a) removing a fixed bed from a vehicle; b) providing a vehicle dump body elevation device comprising at least one hinge assembly to move a dump body between a lowered position wherein the dump body is substantially horizontal, and a raised position wherein a front portion of the dump body is elevated higher than a rear portion of the dump body, and wherein the rear portion of the dump body is elevated clear of a rear bumper mounted on the vehicle frame; wherein the hinge assembly moves both the front and the rear portions of the dump body upwardly, while pivoting the dump body to the raised position; and at least one hoist having a first means for pivotal attachment to a vehicle frame and a second means for pivotal attachment to the dump body; c) mounting the hinge assembly to the vehicle frame; d) mounting the hoist to the vehicle frame; and e) mounting the hinge assembly and the hoist to the dump body.

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al. as applied to claims 9 and 29 above and further in view of Ray.

Parker et al. lack the scissor hoist mechanism having a range of motion and rotation up to about 180 degrees.

Ray (4,019,781) teaches a hoist for a vehicle dump body elevation device having a scissor hoist mechanism with a range of motion up to about 180 degrees.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a scissor hoist mechanism as taught by Ray in place of the hoist of Parker et al. in order to allow the dump body to further rotate and allow better dumping of the contents therein.

#### *Allowable Subject Matter*

8. Claims 28, and 32-38 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Claims 2-8, 11-20, 22-27, 31, and 40-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 571-272-6662.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

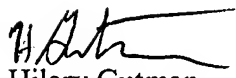
**or faxed to:**

(703) 872-9326, (for formal communications intended for entry)

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label

“PROPOSED” or “DRAFT”).

  
Hilary Gutman  
July 18, 2005